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IN THE

Supreme Court of the United States

October Term, 1942, No. 882

IN THE MATTER OF JAMES AUSTIN ELLISON,

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1942, No. ....

IN THE MATTER OF JAMES AUSTIN ELLISON, PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, James Austin Ellison, respectfully presents:

I.

Summary Statement of Matter Involved

On March 6, 1942, the Grand Jury for the District Court of the United States for the District of Delaware made a presentment against your petitioner.

The presentment (R. 3) charged, among other things, that on December 10, 1941, the petitioner was subpoenaed to appear before the grand jury investigating certain offenses arising out of the Federal election of November 5, 1940; that a witness named Cann had testified perjuriously on December 9, 1941 and that petitioner while sitting in the hall outside the grand jury room endeavored to influence

Cann not to change his perjurious testimony; that petitioner appeared as a witness before the grand jury on December 11, 1941, January 14, 1942 and February 26, 1942; and that he gave "obstructive, evasive, perjurious and contumacious answers to questions propounded to him * * * and has deliberately, wilfully and contumaciously obstructed, impeded and hampered the investigation of the said Grand Jury and the administration of Justice."

A rule to show cause why the petitioner should not be adjudged in contempt of court was made returnable on March 20, 1942 (R. 3).

A motion to quash the rule was filed on behalf of the petitioner, urging, inter alia, the right to a jury trial, which motion was denied in an opinion by the Honorable Albert Watson, D. J. (R. 18). Thereafter the matter was called for hearing and on June 24, 1942 the court found petitioner guilty of contempt of court and sentenced him to a term of three months imprisonment.

An appeal was taken to the Circuit Court of Appeals for the Third Circuit and the judgment was affirmed in a per curiam opinion filed on February 15, 1943 (R. 30).

II.

Basis of Jurisdiction

The jurisdiction of this court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347).

III.

Questions Presented

1. Is not a defendant charged with contempt of court arising from testimony given before a grand jury at a time when the court itself was not in session, entitled to a jury trial where the proceeding is not immediately instituted and where the contempt charged also constituted separate and distinct substantive crimes?

2. May a defendant charged with substantive crimes be summarily punished for contempt of court where the alleged contempt did not occur in the actual, physical presence of the court?

3. May a defendant be summarily punished for contempt where the alleged contemptuous conduct does not disturb the order and decorum of the court so as to prevent its proceeding in the orderly dispatch of its business?

IV.

Reasons Relied On for the Allowance of the Writ

1. The basis of the District Court opinion is the case of *United States v. Pendergast*, 39 F. Supp. 189. The Government relied also on the same case which, at the time of the argument before the Circuit Court, had been affirmed by the Eighth Circuit (128 F. 2d 676). The opinion of the Third Circuit in the present case was intentionally withheld to await the decision of the Supreme Court in the *Pendergast* case to determine the scope of the case of *Nye v. United States*, 313 U. S. 33, but the decision in that

case did not pass upon the point though it was specifically raised (U. S. , 87 L. ed. 275, 278).

2. The facts charged do not constitute a contempt of court which is summarily punishable under the *Nye* decision.

3. There is now a conflict in the circuits in construing the decision of this Court in the *Nye* case.

4. The power of courts summarily to punish contempts is of grave importance and the law should be definitely settled with regard thereto.